

ARIZONA WEEKLY JOURNAL-MINER.

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PRESCOTT, ARIZONA WEDNESDAY, MAY 19, 1886.

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THE INSANE ASYLUM DIRECTORS

Direct and Explicit Denial and Answer to Gov. Zulek's Charges.

In the matter of the charges and specifications against F. C. Hatch, Oscar Lincoln and M. W. Stewart, Directors of the Territorial Insane Asylum of Arizona pending before His Excellency C. Meyer Zulek, Governor.

To His Excellency, C. MEYER ZULEK, GOVERNOR OF THE TERRITORY OF ARIZONA:

Come now the above named directors (respondents herein) by their Attorneys E. J. Edwards and Herndon & Hawkins and for answer to the written charge and specifications preferred by Your Excellency on April 29th, 1886, against said directors of said Territorial Insane Asylum, deny and allege as follows:

Deny that they or either of them are or have been guilty of any neglect of duty or of official misconduct or of incompetency in any manner or respect whatever, but on the contrary they say that, from the time of their appointment as such directors they have faithfully, diligently and as the law directs discharged their duty, with a single desire to faithfully and honestly carry out the provisions of the law and for the best interests of the Territory of Arizona.

Deny that they neglected to transmit to the Governor a certified copy of the record of the bonds received and sold, the name of the purchaser and the price received as required by law, as stated in the first specification.

In answer to specification second they deny that the law required or directed that the \$100,000 face value of Insane Asylum bonds, or any part thereof should be sold at public sale, and respondents do say that before the sale of any of said bonds they caused the notice of such sale to be published for the space of one month in four daily newspapers published in English—one in the City of New York, State of New York, one in the City of San Francisco, State of California, one at the Territorial Capital, and one in the City of Phoenix, in said Territory.

That said notice specified the amount of bonds to be sold, the rate of interest they should bear, the place, day and hour of sale, and that sealed proposals would be received by the said Board of Directors for the purchase of said bonds within one month from the expiration of such first publication; and at the place, on the day and hour named in said notice, the respondents met and no bids were received for said bonds as any of them.

That afterwards one H. E. Harris, made a proposition to said Directors to purchase the whole of said bonds at ninety-five cents on the dollar, which bid was accepted by the said Board of Directors. That said Harris paid the sum of nine thousand five hundred dollars for ten of said bonds, and that afterwards on the account of the reports put in circulation by certain parties not having the interest of the Territory at heart, and being desirous of defeating the ends aimed at by the law creating said Asylum and providing for the erection and maintenance thereof, that said bonds were not good and valid securities, and that the Act authorizing their issue would be annulled by Congress, the said Harris declined to take any more of said bonds, copies of which said reports so coming to said H. E. Harris by letters are hereto attached and marked Exhibits "A," "B," "C," and made a part hereof.

Relying upon this sale to said Harris, the Board of Directors adopted the plans and specifications of one W. C. Costello, for the erection of the Insane Asylum and after complying with all the requirements of the law in advertising for sealed proposals for the contract of erecting the same, accepted the proposition of Messrs. Carle, Croly & Abernethy, of Stockton, California, for the erection of the building—the original contract being the sum of \$42,999—and they the contractors immediately thereafter commenced the construction of said building. At the time that the said Harris failed to take the balance of said bonds there was remaining in the hands of the treasurer of said Board of Directors a balance of about six thousand dollars in cash to meet this contract of \$42,999. Said Directors finding themselves with a contract on hand and only the sum of about six thousand dollars in money at their command it became absolutely necessary under the spirit and intent of the law, and to carry out the provisions thereof in equity and good conscience to realize the money on said bonds, and keep faith with said contractors and that accordingly said bonds were sold by the directors at and for the price of ninety five cents on the dollar, and in accordance with the law.

Deny that they sold one hundred thousand dollars face value of Insane Asylum bonds for less than ninety-five per cent. of their face value.

Deny that they delivered ninety bonds to William Christy without security or written contract of conditions of sale, or that they failed to require of him the payment into the treasury of the Board of Directors the proceeds of such sale.

Deny that they failed to have official knowledge that the money entrusted to the treasurer was kept in a safe and reliable repository; but on the contrary, they say and allege, that the

said money was placed in a safe and reliable depository, and the same is now, and has always been, kept so, of all of which the Board had and has official knowledge.

Deny that they extravagantly expended the public funds by paying one hundred dollars per month to one N. A. Morford as Secretary of such Board, and respondents allege the facts to be that the salary of the said Secretary was fixed, on the organization of the Board, at twenty-five dollars per month, and so continued until September when, by vote of the Board, in consequence of the increased duties of said Secretary, his salary was raised to one hundred dollars per month, and so continued until on or about the month of March following when it was reduced to fifty dollars per month. That the salary paid to said Secretary is reasonable and just and no more than he is reasonably and justly entitled to on account of the work done by him.

Deny that they misappropriated the sum of seven hundred sixty-six dollars or any other sum to defray the expenses of Directors Stewart and Hatch to San Francisco; but respondents allege that Directors Stewart and Hatch went to San Francisco, Napa and Stockton and by order of the Board and upon legitimate business for said Board of Directors, for the purpose of negotiating the sale of said bonds, and for the purpose of visiting the insane asylums of California and consulting with the resident physicians upon the practicability of the plans and specifications for the erection of the Insane Asylum in this Territory. That it became and was necessary for the said Directors to obtain such knowledge and information, in order for them to intelligently adopt plans and specifications for the said Asylum building, and to faithfully carry out the provisions of the law, and that the expenses so incurred by them were and are legal and equitable charges against the Territory. And that they received as compensation for such services the sum of seven hundred and sixty-six dollars, which said sum was inadequate to cover the expenses so incurred by said Stewart and Hatch, Director Hatch receiving the sum of \$344.25, and Director Stewart receiving \$321.75.

Deny that the payment of twelve hundred and seventy dollars to Director Lincoln as compensation is or was illegal or unauthorized.

In answer to Specification Nine, respondents do say that they did approve the official bond of William Christy in the sum of fifty thousand dollars, but they deny that they did so approve or without advising themselves respecting the competency of the sureties thereon; and they deny that by approving said bond that they thereby jeopardized the public moneys under the control of said board, and the respondents allege that the law creating said office of treasurer only required a bond in the sum of ten thousand dollars, but that the said Board of Directors, not regarding such amount sufficient, required of the said treasurer that he execute a bond in the sum of fifty thousand dollars, being forty thousand dollars in excess of the amount required by the law. That said bond was at all times, and now is, a good and sufficient bond.

In answer to Specification Ten, respondents say that the Honorary Board of Directors of the Insane Asylum had no right nor authority to order or direct the Secretary and Treasurer of the Board of Directors to appear before them in person with the books and papers pertaining to their respective offices at the City of Prescott. That said officers reside at the City of Phoenix; that all the business of the Board was transacted at the City of Phoenix, that they held their meetings there, and their office, and all the books and papers pertaining thereto were kept at the said City of Phoenix; and that the law contemplated that the meeting of the Honorary Board of Directors of said Insane Asylum be at the said Insane Asylum or at the City of Phoenix, where the books and papers are at all times open to the inspection of the Honorary Board of Directors and the general public, as will be seen by Section 25, of the Act of the Legislature, establishing said Asylum, and providing for the government thereof, and to which reference is hereby made.

In answer to Specification Eleven, respondents admit Directors Lincoln and Hatch refused to answer certain questions propounded to them by Your Excellency, as a member of the Honorary Board of Insane Asylum Directors, in the presence of said Honorary Board.

But respondents say that they were justified in so doing for the reason that said questions were not legal, proper or legitimate, and assumed facts which did not exist; and for the further reason that said examination by said Honorary Board was conducted with closed doors and in secret, and upon questions prepared by said Honorary Board, or some member thereof in writing.

That said Directors Lincoln and Hatch requested that a copy of all said questions should be furnished to them, so they might prepare their answers to the same in writing; but this reasonable request was denied. (A copy of which said request is hereto attached and marked Exhibit D).

That Director Hatch was furnished a list of

certain questions, which he objected to, but that afterwards such list was demanded of him by said Honorary Board, and he, upon such demand, delivered the same to said Honorary Board.

That Director Hatch was again summoned before said Honorary Board to answer the questions remaining unanswered by him, at which time said Hatch appeared and submitted to said Honorary Board his reasons, in writing, why he would not answer the questions. (A copy of such communication is hereto attached and marked Exhibit E).

Your Excellency refused to receive said communication or allow the same to be read, on the grounds, as stated by Your Excellency, that said Director Hatch had placed himself, by his actions in refusing to answer the said questions, outside the bounds of propriety and that he was not entitled to any courtesy from said Honorary Board.

Deny that they acted with undue haste or in violation of business judgment and discretion in withdrawing from the Territorial Treasurer the entire issue of bonds, or that they forced upon the market said bonds.

Deny that by any act or acts of said respondents the chances to secure a fair price for said bonds were lessened.

Deny that any act of respondents in the sale of said bonds was in violation of business judgment or discretion—or that the Territory has lost one dollar in any way by them as such Directors.

Respondents do further deny each and every charge contained in said specification and each and every charge preferred against them by Your Excellency, from the beginning to the end thereof, not hereinbefore admitted.

And respondents having fully answered all the charges and specifications preferred against them by Your Excellency, do further say: That they in good faith, and for the purpose of carrying out the provisions of the Act of the Legislature, have caused to be erected an asylum building and necessary out-houses upon the lands conveyed to them.

That they have also caused said lands (600 acres) to be put in cultivation, having planted and growing thereon ten acres of orchards and vines, two acres of vegetables, and one hundred and five (105) acres of wheat and alfalfa.

That said building is substantially built and of great strength and beauty.

That said Directors have acted in the best of faith and in their judgment for the best interests of the Territory in every step they have taken—and if any errors have been committed, they did not know it.

That they have each given bond in the sum of ten thousand dollars; that said bonds are solvent; and they, the said Directors, are able and willing to respond in damages, if they have in any way neglected their duty or violated the law, or if the Territory has lost anything by any act of theirs.

And finally respondents do say that for the purpose of establishing the legality of all and every of their official acts, and the integrity of their conduct, regarding all they have done as such Directors, they are ready and willing to have a thorough and complete examination before any legally constituted tribunal.

But they do most respectfully deny that Your Excellency, the Governor, has the right, under the Organic Act and the laws of this Territory, to prefer charges, and then to sit in a judicial capacity and exercise the functions of a Court, Judge and Jury, to hear, try and determine the same.

E. J. EDWARDS and HERNDON & HAWKINS, ATTORNEYS FOR RESPONDENTS.

EXHIBIT A. (Dictated.)

N. W. HARRIS, D. J. HARRIS, INVESTMENT BANKERS,

115 & 117 Monroe Street, Montauk Block, Adjoining First National Bank Bldg., CHICAGO, Oct. 29th, 1885.

H. E. HARRIS, Esq., Prescott, Ariz.

DEAR SIR—On examination we find that by Section 1850 of the revised statutes of the United States, the laws passed by the legislature of Arizona have to be submitted to Congress and if disapproved it shall be null and of no effect. Has this statute been repealed as to Arizona? If so, please refer us to the law repealing this provision. If not please inform us if the bill authorizing the issue of the Insane Hospital bonds have been presented to Congress and approved? Please inform us by return mail and greatly oblige.

Yours truly, N. W. HARRIS & CO.

P. S.—We sent a duplicate of this letter to Phoenix to you.

(EXHIBIT B.)

N. W. HARRIS, D. J. HARRIS, INVESTMENT BANKERS,

115 & 117 Monroe Street, Montauk Block, Adjoining First National Bank Bldg., CHICAGO, Oct. 29th, 1885.

H. E. HARRIS, Esq., Prescott, Ariz.

DEAR SIR—We are informed that the U. S. Congress will be asked to annul the act authorizing the Insane Asylum bonds, and that the assessed valuation of the Territory is \$6,000,000, less this year than last year, and also that said bonds were offered at 95 to parties in San Francisco and declined.

The parties who bought the former issue, we are informed, declined to buy this issue upon any terms, as their issue was not approved by the best citizens of the Territory, etc. This information does not agree with the representation you made to us, so we thought that in justice to you that we should immediately communicate them to you.

Yours Truly, N. W. HARRIS & CO.

(EXHIBIT C.) (Dictated F.)

N. W. HARRIS, D. J. HARRIS, INVESTMENT BANKERS,

176 Dearborn St., CHICAGO, Nov. 18th, 1885.

H. E. HARRIS, Prescott, Arizona:

DEAR SIR—Your letter of the 7th inst. is at hand today. In view of a letter received from our Mr. N. W. Harris, who is east, we have decided, in view of the various rumors respecting the Arizona bonds, not to run any risk with them, and we accordingly telegraphed you to-night night message, "contract cancelled."

We infer from your asking us to telegraph in this way that you have not received our letter of Nov. 2d, in which we stated that in view of all the circumstances of the case we released you from your agreement with us of October 16th, 1885, but, as we stated therein, as soon as the law under which the bonds were issued, has been approved by Congress, if the bonds are not then sold, do not fail to inform us. Yours truly,

N. W. HARRIS & CO. (EXHIBIT D.)

PRESCOTT, A. T., April 23d, 1886.

TO THE HONORARY BOARD OF DIRECTORS FOR THE INSANE ASYLUM OF ARIZONA:

GENTLEMEN—We, Oscar Lincoln and F. C. Hatch, members of the Board of Directors of the Insane Asylum do

herby respectfully request a copy of all the written interrogatories which you have prepared and exhibited to be propounded to us and to which you desire us to make answer.

We find these interrogatories so complex, prolix and mixed, and covering questions not of fact only, but of policy, law and conclusions, that time is required for an examination of them in order to understand their full meaning.

We will cheerfully answer any question of fact without delay, but ask sufficient time to fully understand these interrogatories now exhibited before attempting a reply.

Very Respectfully, F. C. HATCH.

(EXHIBIT E.)

PRESCOTT, April 24th, 1886.

TOTHE HONORARY BOARD OF DIRECTORS FOR THE INSANE ASYLUM:

GENTLEMEN—I am in receipt of your notice directed me again to appear before your Honorary Board and answer the interrogatories propounded to me in writing at your meeting yesterday.

Many of your questions are upon a false representation of facts, and of such character that without study, I cannot fully understand their true meaning.

I am ready, cheerfully, to answer any and all questions that your Board may direct regarding facts within my knowledge, and to aid you in every way in the performance of your duties, but I positively refuse to answer, and have my answers recorded, to a list of some forty questions carefully prepared by you, unless I am furnished a complete copy of all said questions, and time given me to prepare my answers.

If you have the right to prepare and propound these questions to me, I certainly can justly claim the same for a copy of said questions, that I may fully comprehend them before my answers are given.

Very respectfully, F. C. HATCH, Director Insane Asylum Commission.

IN THE MATTER OF THE CHARGE AND SPECIFICATIONS AGAINST F. C. HATCH, OSCAR LINCOLN AND M. W. STEWART, DIRECTORS OF THE TERRITORIAL INSANE ASYLUM OF ARIZONA, PENDING BEFORE HIS EXCELLENCY, C. MEYER ZULEK, GOVERNOR.

PLEA TO THE JURISDICTION.

Now come the above named Respondents and plead, that his Excellency, the Governor of the Territory of Arizona, has no jurisdiction of the subject matter:

First: The Governor has no judicial power to hear, or try, or try and determine the subject of this action, on the written charge and specifications, or any of them, on file herein.

Second: The judicial power of the Territory of Arizona is invested in the Supreme Court, the District Courts, and the inferior Courts created by law.

Having fully plead to the jurisdiction, the Respondents pray that said charge and specifications, and the proceedings herein be dismissed.

Said Respondents, by E. J. EDWARDS and HERNDON & HAWKINS, Their Attorneys.

DEMURRER.

The said Respondents, subject to action on the plea to the jurisdiction pleaded, demur to the said charge and specifications, and to each of them, because of the face thereof, and of each of the same, it appears that his Excellency, the Governor, etc., has no jurisdiction of the subject of the action, and has no judicial power, neither to hear, nor to try, nor to try and determine the subject of the action, nor the written charge nor the specifications, nor any of them, and so the Respondents pray that the same be dismissed.

Said Respondents, by E. J. EDWARDS and HERNDON & HAWKINS, Their Attorneys.

THE TESTIMONY.

On resuming the hearing of the charges and specifications against the Board of Directors of the Insane Asylum, on Thursday, the Governor, after overruling the demurrer to jurisdiction filed by counsel for the Directors, directed that James A. Bayard, Secretary of the Territory, be called as a witness on behalf of the Territory. Mr. Bayard, after being sworn by the Governor, identified certain papers in his possession as Secretary of the Honorary Board of Directors, which were all introduced in evidence, the Governor overruling the objections of counsel for the Directors to their admission, which objections were made on the ground that the Governor had no power to administer an oath to any person testifying as a witness in this case, and also because none of the papers or documents in question were sworn to or in any way proven to be the instruments they purport to be. After which, Mr. Bayard was cross examined, as follows, by Mr. Herndon, counsel for the Directors:

Mr. Herndon.—Mr. Bayard, when did you sign this report of the Honorary Board of Directors of the Insane Asylum?

Answer.—On the 29th of April.

Mr. H.—Do you know when the charges against these Directors were prepared?

Ans.—I don't think I quite understand the question. Mr. H.—It is simply, do you know when these charges were prepared by the Governor?

Ans.—I can't say positively, now, what the exact date was.

Ques.—Was it before or after the report of the Honorary Board of Directors was made out?

Ans.—I believe it was after.

Mr. H.—Do you know who sent that report to Phoenix?

Ans.—I did.

Mr. H.—Do you know whether or not the charges against the Directors went down at the same time?

Ans.—I do not.

Mr. H.—Mr. Bayard, who had signed that report at the time you sent it from here?

Ans.—I had.

Mr. H.—Had anyone else signed it?

Ans.—No, sir.

Mr. H.—Who signed it beside yourself afterwards?

Ans.—Dr. Mahoney.

Mr. H.—How many members of that Honorary Board are there?

Ans.—There are five members.

Mr. H.—When did you get this report back from Phoenix?

Ans.—I don't know as I can give you the exact date; but I think the report went down on the twenty-ninth of April—that was Thursday, I think—and it was returned either on Sunday night or Monday night, I don't know which.

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(NEAR PRINTING HOUSE.)

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Correspondence on all subjects of general interest will be accepted, and news from any locality is solicited, especially from the mining and agricultural districts.

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